

REMARKS:

Applicant respectfully traverses the restriction requirement. Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why the inventions as claimed are either independent or distinct; and (B) the reasons for insisting upon restriction therebetween as set forth in the following sections. See MPEP §808. See also MPEP §803, set forth in pertinent part below (emphasis added):

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 -§ 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) -§ 806.04(i), § 808.01(a), and § 808.02).

GUIDELINES

Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the restriction requirement in most cases.

For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. That prima facie showing may be rebutted by appropriate showings or evidence by the applicant. Insofar as the criteria for restriction practice relating to Markush-type claims is concerned, the criteria is set forth in MPEP § 803.02. Insofar as the criteria for restriction or election practice relating to claims to genus-species, see MPEP § 806.04(a) -§ 806.04(i) and § 808.01(a).

In the instant case, the examiner has provided no reasons why the two species are patentably distinct. Nor has the examiner demonstrated that examining all pending claims would create a serious burden on the examiner. Accordingly, applicant

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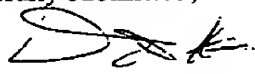
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respectfully requests that the examiner withdraw the restriction requirement and examine all currently pending claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 09-0466 (Order No. SJO9-2001-0135US1).

Respectfully submitted,

By:


Dominic M. Kotab
Reg. No. 42,762

Date:

11/19/03

Silicon Valley IP Group, PC
P.O. Box 721120
San Jose, California 95172-1120
Telephone: (408) 971-2573
Facsimile: (408) 971-4660

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